

STATE OF MICHIGAN
COURT OF APPEALS

In re PROUD, Minors.

UNPUBLISHED

August 10, 2017

No. 336335

Monroe Circuit Court

Family Division

LC No. 15-023717-NA

Before: SAAD, P.J., and SERVITTO and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor children under MCL 712A.19b(3)(g), (h), and (j). We affirm.

In November 2015, petitioner, the Department of Health and Human Services (DHHS), filed a petition asking the court to take jurisdiction over the minor children because respondent committed an armed robbery while high on heroin and cocaine and with the children present. Respondent had a history with Children's Protective Services (CPS) dating back to 2014, arising from issues involving substance abuse, domestic violence, having a drug-positive newborn, and homelessness. Respondent admitted that she was incarcerated on pending armed-robbery charges and that she had issues with heroin and cocaine, so the trial court took jurisdiction over the children. Petitioner created a treatment plan, which required respondent to participate in substance abuse treatment, a psychological assessment, random drug screens, and parenting classes, and to obtain housing and a legal source of income. The trial court ordered respondent to participate in any of the recommended services that could be completed during incarceration, and the goal remained reunification.

In May 2016, however, respondent was sentenced to 50 to 360 months' imprisonment for her participation in the armed robbery. Petitioner requested a goal change for the children from reunification to adoption and filed a termination petition in September 2016. In the termination petition, petitioner alleged that respondent's earliest release date was 2020, that she failed to comply with her treatment plan, and that she lacked a bond with her children. Following a hearing, the trial court entered an order terminating respondent's parental rights. On appeal, respondent argues that the trial court erred by finding that sufficient evidence established a statutory ground for termination and that termination was in her children's best interests.

In order to terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Only one

statutory ground need be established to support termination of parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). If the petitioner sufficiently establishes a statutory ground for termination, the trial court shall order termination of a respondent's parental rights if the court also finds that termination is in the child's best interests. MCL 712A.19b(5). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in a child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error both a trial court's finding that a statutory ground for termination has been established by clear and convincing evidence and a trial court's decision that termination is in the best interests of a child. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Termination of respondent's parental rights was based on MCL 712A.19b(3)(g), (h), and (j), which allow termination of parental rights under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err by finding that clear and convincing evidence established at least one of these statutory grounds for termination. Evidence showed that respondent failed to provide proper care and custody for her children in a multitude of ways. Respondent acknowledged that she used heroin and cocaine while the children were in her care and respondent's youngest child was born positive for drugs. Respondent's young children were also with her when she participated in an armed robbery. Evidence showed that respondent failed to have the children properly immunized, she brought the children to inappropriate places, and she exposed the children to undesirable people. Respondent was involved with CPS for over a year before the court took jurisdiction over her children, and she received services during that time, but continued to make poor decisions, as evidenced by her continuing drug use and her participation in an armed robbery. Respondent was in prison at the time of the termination hearing with an earliest release date of 2020. Considered together, these circumstances justified termination of respondent's parental rights.

Respondent argues that she provided proper care and custody for her children because they were placed with relatives, specifically, their paternal grandparents. In *In re Mason*, 486 Mich at 160, our Supreme Court explained that a parent's "mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." The Court explained that an incarcerated parent could provide proper care and custody for a child by "voluntarily granting legal custody to his relatives" during a term of incarceration, noting that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)." *Id.* at 163-164. In this case, however, respondent simply claims that she agreed with the children's placement with relatives; she makes no claim, and the record does not support, that respondent voluntarily granted custody of her children to her relatives or in any way directed their placement. Instead, the children's placement was arranged and facilitated by DHHS and the trial court. Respondent's argument therefore lacks merit.

When assessing a child's best interests, courts may consider the child's bond to his or her parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court should weigh all the evidence available to it to determine a child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

The trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests. The children were placed with their paternal grandparents, who were meeting all of their needs, and the children shared a strong bond with their grandparents. Evidence demonstrated that the children did not share a significant bond with respondent and did not view respondent as a parent. The grandparents were licensed foster care providers and were willing to give the children permanency and stability by adopting them. As already noted, respondent had a history of making poor parenting decisions and she would be imprisoned for a lengthy period of time. For the foregoing reasons, the trial court did not clearly err by concluding that a preponderance of the evidence established that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Henry William Saad
/s/ Deborah A. Servitto
/s/ Michael F. Gadola